The Truth About That Security Report

Its Red Smear Attack on the Judiciary, P. 4; Its Phoney Right to Confront, Page 3

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What Happens When the FBI Investigates Itself

The report of the Commission on Government Security is a monument to the inexplicable folly—we do not want to use a harsher word—of Hubert Humphrey. In the middle of the uproar two years ago over the loyalty-security "numbers racket," Senator Humphrey suddenly fathered the resolution which set up this Commission. The result was to hand the Eisenhower Administration and the FBI a chance to whitewash clearance procedures just when the public was demanding investigation. The Democrats could have made a political issue of the criticism aroused by the "faceless informer" and by the confusions brought to light in such cases as those of Ladejinsky. The Democratic controlled Senate could have set up an investigation of its own. Instead Humphrey introduced a resolution which this *Weekly* (March 21, 1955) termed "a booby trap for liberals." It called for a Commission of 12, of whom four were to be appointed by the White House and four by Nixon, thus ensuring Republican control. In addition, as we pointed out at the time, the terms of the resolution were designed to protect the precious "confidential informant" system of the FBI from a real airing.

That Alien Ideologist From Monticello

The Commission, its staff, and its proceedings were models of how not to investigate secret police practices. Not a single liberal or even a distinguished conservative was among the 12 men named to the Commission. But it included one witch hunter, Chairman Walter of the House Un-American Activities Committee. The chairman, Loyd Wright, of Los Angeles, a former president of the American Bar Association, may be judged from the interview with him in last Sunday's *Washington Star* (June 23). When the interviewer suggested that Mr. Wright seemed to entertain some fears about the Supreme Court, he replied, "Very definitely. We are in the unhappy situation where the court is taking a license to spread ideologies rather than the cornerstone of Anglo-Saxon jurisprudence, which is precedence." Mr. Wright seems to regard the First amendment as alien ideology.

The staff, it turns out, was carefully chosen. Mr. Wright told the House Appropriations Committee last year (page 823 of the hearings on the Supplemental Appropriation Bill) that the top job, that of Administrative Director, was filled by a Mr. D. Milton Ladd at $15,000, and the No. 2 job by a Mr. Stanley J. Tracy at the same salary. He gave no indication whatsoever as to their background and qualifications. But anyone who now gets as far as the staff biographies on page 761 of the Commission report will discover that Mr. Ladd retired in 1954 after 26 years as an FBI man, his last post being that of assistant to J. Edgar Hoover "in charge of all FBI intelligence and criminal investigations." Mr. Tracy, it appears, also retired from the FBI in 1954, when he held the post of Assistant Director. In studying FBI procedures, they were reviewing a record of which their own life work was a part. It is not strange that while the report criticizes the military for over-classification and (surprise!) the State Department's passport division for violating due process, it finds (see box on page four) that the "competency and fairness" of the FBI "has not been seriously questioned." The verdict was built-in.

No Victims Heard—Out Loud, Anyway

The procedure, like the staff, was designed to give the secret police a minimum of bother. The Commission must have heard many witnesses—there are occasional references to them in the report—but it heard them all in private, as if they were confidential informants. If any victims were heard, their voices could not penetrate beyond the Commission's closed doors. In 18 months of existence, the Commission never held a public hearing or a press conference, except for a final briefing session just before its report was released last week. This was significant chiefly for its demonstration of how little Mr. Wright knew about his own report. Every time a question got specific, it had to be referred to the equable and competent Mr. Ladd or to the Commission's sharp general counsel, a Mr. Samuel H. Liberman of St. Louis, who reminded one strongly of Mr. Benjamin Mandel, the research director of the Senate Internal Security Committee.

Mr. Hoover maintains close liaison with the Congressional witch hunt committees; he was an admirer of McCarthy and approves the exposure of radicals but his old assistants took care that there should be no similar open hearings to educate the public as to security-loyalty abuses. One would never guess from the Commission's report that thousands of lives have been cruelly hurt by these abuses, nor that among the confidential informants so precious to the FBI there has turned up a most odoriferous assortment of crackpots and moochers with memories so double-jointed they might (for a fee) identify Eastland himself as a fellow Bukharinite from the Bronx. This is what might have been expected when a secret police is allowed to study its own navel in secret.

Hopeful Stocking Filled at Last

The result of these narcissistic meditations is a series of recommendations embodying everything the FBI has long wanted for Christmas: a bill to legalize wire-tapping, a law to punish newspapermen who print "official secrets," an executive order to provide stricter surveillance over international

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organizations, a law denying suspected subversives the right to travel even in normal times, extension of security procedures to civil air transport, statutory authority for the Attorney General's list and the establishment by law of a super-duper Central Security Office which will freeze the loyalty-security mania *permanently into the structure of American government.*

The most sinister, though little noticed, aspect of the report is its implication that the Judiciary, too, cannot be trusted but must have its personnel screened for loyalty and security by the FBI. This elicited a protest from the Commission's lone dissenter, former Attorney General James P. McGranery, whose views were misrepresented in the Commission's press release and hidden away behind the index. (We print part of them on page four.) Mr. McGranery also protested the proposal for a Central Security Agency as tending "to weaken the foundations of our freedom by the building of an extravagant and false facade: a topheavy superstructure masquerading as efficient, expedient security." Coming from Mr. Truman's last and most reactionary Attorney General, this is doubly eloquent.

Rule by Flatfoot

Behind the smoke-screen of a few procedural reforms and (see next page) a spurious claim to establish the right to confront accusers, the Commission would extend and make permanent what began ten years ago as an emergency program limited to government employes. Suspicion rather than trust would be the *leitmotif of American life; avoidance of risk,* rather than freedom, its anxiety. Plato's closed society was at least to be ruled by philosophers, not flatfeet. The Commission's report would move toward a closed society ruled by the ubiquitous secret agent marking down in his little black book whatever he overhears. For the logic of this program cannot be contained. Once the premises of surveillance are accepted, it tends to widen. If messenger clerks and mailmen have to be screened, why not doctors, lawyers, and newspapermen? If the "regularly established confidential informants" of the FBI are too important to the national security to be disclosed in loyalty hearings, why should not their evidence be taken secretly in court proceedings too? And if the Bill of Rights and the Constitution provide excuse for subversive decisions by judges who perversely distrust the secret police, cannot something be done to put these venerable but dangerous documents in cold storage?

Business Men Annoyed

Oddly enough a point of resistance turns up in the American business man. The one point at which the report slows down respectfully is at the factory gate. "The Commission," Mr. Wright told the House Appropriations Committee last year, "has already received information indicating that industry is encountering considerable trouble and expense in handling its programs of personnel, physical and document security. . . ." The only strong protests that come through in this report are those of business men who feel that industrial and scientific progress is being tied up in security and secrecy knots; an example is the letter from the head of United Aircraft quoted on pages 166-7, and the criticism of the military on pages 300-1. The one point at which the Commission proposes to shrink rather than expand the area of surveillance is in industry. It recommends (p. 176) not only that the category of "confidential" on government documents be abolished but that "industry be permitted immediately to discontinue clearance of employees for existing contracts classified confidential." It opposes the Butler bill, which would have extended loyalty-security procedures to all workers in industry, even though not engaged on military contracts. It wants the Department of Commerce Office of Strategic Information abolished; OSI's surveillance of technical publications has gotten into the hair of industry.

In response to business pressure, the report adopts the logic of the Supreme Court's *Cole* decision which would limit loyalty-security procedures to sensitive positions. But in dealing with government, the report would extend the procedures to every employe no matter how unimportant. The contrast in treatment is striking. The fact that the government already allows private industry to clear employes for access to confidential information "without requiring a security investigation of any sort" is regarded by the Commission (p. 304) with approval, and as indicating that "the degree of risk to the national security is not substantial." The report (p. 305) says "the industrial process is such that the various phases of a confidential contract are so dispersed that it would be virtually impossible to assemble this information to the detriment of the national security." It objects that the Butler bill would "require a screening of thousands of individuals [in industry] not now subject to the security program" and explains that the investigative agencies already have "the hard-core Communists . . . well-identified" (p. 273) and readily apprehendable for detention under the Internal Security Act "in the event of war or insurrection." It cites (p. 174) with approval the industrial and scientific view that "security at its best can only provide lead time in this highly technological age."

Nobody Really Trusted But The Cops

But there are whole agencies and departments of government which have much less to do with any real military secrets than many businesses today. Yet the Commission on Security not only proposes to blanket in every government worker but to keep him under constant surveillance. He is forever suspect. "A loyalty case," the report says at page 74, "can never be *res adjudicata,*" the legal term for a case finally settled by the courts. The employe must be subject to new check at any time "even though he may have emerged clean and clear from a score of investigations and as many hearings." The ultimate idiocy is that though cleared for "suitability" and certified for "loyalty," he may still be distrusted for sensitive jobs. As the report says (pps. 85-6), "There are certain positions in Government which are so identified with the national security interest that even though an incumbent employe may not be disloyal or unsuitable for employment generally under the recommended regulations, nevertheless his background may be such that he is unsuitable for a particular position." Apparently nobody can really be trusted except the secret police, though they, of course, would be exempt (p. 51) from loyalty-security procedures.

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The "Small Print" Gives The Lie to the Claim That Made The Headlines

Debunking That "Right of Confrontation" in The New Security Report

Here are some of the loopholes in that "right of confrontation" recommended by the report of the Commission on Security:

1. It would not apply to "regularly established confidential informants." But many of these have proven to be unreliable. Some have become notorious as perjurers. Several have been committed as alcoholics or insane.

2. Even when some scandal or court appearance has disclosed the name of one of these informants, the "derogatory information" furnished by him may be considered by the hearing examiner without an opportunity for cross-examination if he is unavailable "because of death, incompetency, or other reason."

Casual Informants Shielded, Too

3. Casual informants may not be subpoenaed for cross-examination, either, if they gave information to the FBI on the promise that their identity would not be disclosed.

The report says the examiner is not to consider derogatory information supplied by informants immune from cross-examination. But this may prove to be quite a feat since the Security Commission also says (p. 68), that nothing in its recommendations on confrontation "should be construed to require the investigating agency to exclude from its report any information derived from any source." So the FBI could go on using such casual information, and yet keep the source a secret from those accused. How is the examiner to blot such information from his mind?

The proposed new security law seems to contradict itself on this point. Section 84 says the hearing examiner is not to consider such information. But Section 86 says (p. 714) that "notwithstanding" this provision "the examiner may receive in evidence . . . information or documentary material offered in behalf of the Attorney General, in summary form or otherwise, without requiring the disclosure of classified information." Presumably if the Attorney General declared the source of the information classified, it could then be put in evidence without giving the accused a chance to confront or cross-examine.

Hard on Defense Workers

4. A special loophole as wide as a hangar door appears in the case of workers in defense facilities. Section 84 (page 713) limits the right of confrontation in industrial security cases. Eight kinds of charges are exempt (p. 709-10) from the right of confrontation.

These include charges as vague as "any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy," "any facts which furnish reason to believe that the individual may be subjected to coercion, influence or pressure which may cause him to act contrary to the best interests of the national security," and "any other activity, association or condition which tends to establish reasonable ground for belief that access by such individual to classified information or to any security facility will endanger the common defense and security."

These are sweeping enough to cover malicious gossip in a shop or factory without giving the accused a chance to cross-examine the source.

"Justice and Fair Play"

"Should charges of disloyalty reach the hearing stage, the Commission recommends other safeguards to the person involved. The constitutional guarantee that 'In all criminal cases, the accused shall enjoy the right . . . to be confronted by the witnesses against him,' has never applied to administrative inquiries or loyalty hearings. However, the consequences of a person being declared disloyal are so grave that the Commission felt justice and fair play require that he be permitted to confront and cross-examine witnesses who have furnished derogatory information against him, whenever it may be done without harm to the national security."

—Press Release, Commission on Security.

In addition, it must be kept in mind that all these loopholes and exceptions also affect the statement of charges given the accused. The charges are supposed to be "as specific and detailed as the interests of national security permit" (p. 699). In practice this has meant withholding specific details which might identify the informant. Yet lack of details as to time and place, for example, may make it impossible to disprove an accusation.

5. The widest loophole of all is that opened up by the final sentence of Section 84 (p. 713). This says the "right of confrontation" shall not apply to charges brought "under any other security program."

This refers to discharges as a "security risk" under the so-called "suitability" regulations of the Civil Service Commission. These provide for no right of confrontation. Indeed except in case of veterans they do not provide for any real rights of hearing or appeal, and the Commission on Security recommends that the special hearing rights granted veterans by Section 14 of the Veterans Preference Act of 1944 be repealed by Congress.

"Suitability" Charges Preferred

Against this background the reader may understand better what the report means when it says (p. 85), "the best evidence available to the Commission indicates that since the beginning of the current security program . . . the vast majority of so called 'security removals' have in fact been suitability removals, handled under normal civil service or related procedures. There is no reason to doubt that this practice, *particularly under the Commission's recommended expanded regulations,* can be continued. Where there is a choice of procedures, the suitability procedures should be followed." (Italics added).

The "expanded regulations" recommended by the Commission would allow government workers to be fired as "unsuitable" under the same vague clauses quoted above from the industrial security program as exempt from the right of confrontation.

Thus if other loopholes were not enough to protect a casual informant from cross-examination, the FBI could always use his information in a "suitability" proceeding where there is no right of confrontation.

When all this is added up, it will be seen that the "right of confrontation" recommended with so much fanfare by the report amounts to no more than a public relations smokescreen.

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The Beginning of A Red Smear Attack on the Judiciary?

While the report of the Commission on Security found the FBI practically perfect (see the adjoining box), it cast doubt on the trustworthiness of the Federal judiciary. Scant attention has been paid to this aspect of the report though it may prove the opening gun of a new attack on the courts. The report is calculated to create the impression that recent liberal decisions may be due to the influence of subversive assistants on Federal judges. The report recommends that Court aides be screened for loyalty and "suitability." This would make it difficult for a judge to hire a law clerk or secretary whose ideas seemed too liberal to the FBI. It would also open judges to future McCarthy style smear attack on the charge of hiring or retaining suspect assistants. The potential of this attack for undermining faith in the courts is obvious. It proved too much, however, for only one member of the Commission, James P. McGranery, Truman's last Attorney General, and by no means a liberal. Here is what he had to say in dissenting from this part of the Commission report:

"This member wishes to express a vigorous dissent from the Commission recommendation (p. 106) that *'The judicial branch of the Government should take effective steps to insure that its employees are loyal and otherwise suitable from the standpoint of national security';* and he submits that this recommendation is irrelevant to the scope of the Commission inquiry, not based on any need that has been demonstrated by facts ascertained or ascertainable, a gratuitous conclusion drawn from premises that are purely conjectural.

Judiciary Supposed to Be Independent

"The independence of the Federal judiciary has throughout America's history been the warranty of constitutional government in this Republic. A Federal judge is mindful of the sacred responsibility that is his whether presiding over a trial, hearing an argument, instructing a grand jury or a petit jury, sentencing a defendant, or preparing an opinion. The Founding Fathers provided for continuation of judicial service during good behavior of the judge, and, it is submitted, would have found it as difficult as does this member of the Commission—to envisage the possibility that any conscientious judge—

Practically Perfect

"The Commission has found little fault with the investigative standards, methods or personnel of the executive branch. The competency and fairness of the Federal Bureau of Investigation's trained force in investigating and reporting on Federal personnel loyalty and security matters has not been seriously questioned except by the perennial critics of all security measures and by the uninformed."

—Commission on Government Security, Report, P. 56.

or as the Commission report expresses it (p. 106): '. . . *Federal judges, busy with ever crowded court calendars, must rely upon assistants to prepare briefing papers for them.*'

"It is submitted that such a Federal judge is not 'busy'—he is either lazy or confused. In either instance, the remedy is to proceed to impeach the individual judge—not merely to contaminate the crutch upon which he leans. The Commission report continues to explain, excuse, accuse and conjecture—

"'*False or biased information inadvertently reflected in court opinions in crucial security, constitutional, governmental or social issues of national importance could cause severe effects to the Nation's security and to our Federal loyalty-security system generally.*' (p. 106).

No Evidence Any Such Judge Existed

"This journey into a fanciful world has summoned up a hypothetical judge who is not only lazy and confused but almost unconscious—certainly unaware that his opinion is 'inadvertently' reflecting false or biased information.

"This member of the Commission is happy to report that no evidence was presented at Commission conferences tending to indicate that such a judge is now a member of the Federal judiciary, by appointment of the President of the United States with the advice and consent of the Senate.

"Neither was any evidence presented that at any time in our history such a judge menaced national security by being 'busy with the ever crowded court calendars' or by inadvertent acceptance of 'false or biased information.' This member regrets the unwarranted intrusion into the judicial branch of our government by the recommendation in the foregoing report."

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